

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

William L. and Mary J. Bauer,

Chapter 7

Debtor(s).

BK 04-30933 GFK

NOTICE OF HEARING ON MOTION TO DISMISS CHAPTER 7 CASE

TO: The Debtor, all creditors and other parties in interest:

The United States Trustee has filed a motion to dismiss the above-captioned case for substantial abuse under 11 U.S.C. §707(b).

The Court will hold a hearing on this motion at 2:00 P.M. on June 21, 2004, in Courtroom No. 228 B, at the United States Bankruptcy Court, United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota.

Any response to this motion must be filed and delivered not later than June 16, 2004, which is three days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays), or filed and served by mail not later than June 10, 2004, which is seven days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays). Local Bankruptcy Rule 9006-1.

Dated: _____

CLERK OF BANKRUPTCY COURT

By: _____
Deputy Clerk

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

William L. and Mary J. Bauer,

Chapter 7

Debtor(s).

BK 04-30933 GFK

NOTICE OF HEARING AND MOTION TO DISMISS UNDER 11 U.S.C. § 707(b)

TO: The debtor(s) and other entities specified in Local Rule 9013-3.

1. The United States Trustee, by his undersigned attorney, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 2:00 P.M. on June 21, 2004, in Courtroom No. 228 B, at the United States Bankruptcy Court, United States Courthouse, at 316 North Robert Street, in St. Paul, Minnesota.

3. Any response to this motion must be filed and delivered not later than June 16, 2004, which is three days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays), or filed and served by mail not later than June 10, 2004, which is seven days before the time set for the hearing (excluding intermediate Saturdays, Sundays and legal holidays). Local Bankruptcy Rule 9006-1. UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. Sections 157 and 1334, FED.R.BANKR.P. 5005 and Local Rule 1070-1. The United States Trustee has standing to file this motion pursuant to 28 U.S.C. Section 586(a) and 11 U.S.C. Section 307. This proceeding

is a core proceeding. The petition commencing this Chapter 7 case was filed on February 19, 2004. The case is now pending in this Court.

5. This motion arises under 11 U. S. C. Section 707(b) and FED.R.BANKR.P. 1017, 2002 and 4004. This motion is filed under FED.R.BANKR.P. 9014 and Local Rules 9013-1 to 9013-5. Movant requests that this case be dismissed.

6. From the lists, schedules and statements filed by the debtors, it appears that they have the ability to pay a substantial portion of their dischargeable debt without hardship.

7. The debtors list the following debts:

- (a) On Schedule D, Creditors Holding Secured Claims, the debtors list two claims totaling \$ 204,000.00 secured by 2002 Q45 Infiniti and a mortgage on the homestead.
- (b) On Schedule E, Creditors Holding Unsecured Priority Claims, the debtors list no claims.
- (c) On Schedule F, Creditors Holding Unsecured Nonpriority Claims, the debtors list five claims totaling \$ 74,387.68.

8. The debts listed in the debtors' Schedule of Liabilities appear to be primarily consumer debt. *See* Debtor's Schedule F. The debtors checked on the Petition that the nature of the debts are consumer/non-business.

9. On Schedule I, the debtors list monthly net income of \$ 5,631.93. The debtors are married and list no dependents. On April 9, 2004, the United States Trustee wrote to the debtors for additional financial information. *See* Att. Ex. 1. The debtors timely responded on May 7, 2004. *See* Att. Ex. 2 (without attachments).

Based on the pay stub of William L. Bauer^{1/}, for pay period ending 4/6/04, he has the following net income:

YTD Gross	\$ 21,715.20
Less YTD	
Fed.	(2314.31)
Soc. Sec.	(1328.37)
Medicare	(310.67)
MN State	(1072.80)
Dental	(8.16)
MDEA	(333.36)
MSRS	(868.64)
IPP	(9.65)
Life	(278.88)
YTD Net Income	\$ 15,190.36 ^{2/}

^{1/}For security, the pay stubs are not attached to avoid dissemination of sensitive information on the internet. Upon request, the U.S. Trustee can provide a copy of these documents to counsel for the debtor (if a copy was not retained) or the chapter 7 trustee and may submit the pay stubs at any hearing.

^{2/}This figure does not include voluntary reductions for deferred compensation. Voluntary contributions to retirement/pension accounts are not reasonable or necessary expenses for determining disposable income and that said contributions should be reflected in the calculation of disposable income. See e.g. *In re Harshbarger*, 66 F.3d 775 (6th Cir.1995) (adopting per se rule that voluntary contributions into 401K account are disposable income for Section 1325 purposes); *In re Anes*, 195 F.3d 177 (3rd Cir.1999) (adopting per se rule that voluntary contributions to retirement plan constitute disposable income under Section 1325) *In re Taylor*, 243 F.3d 124 (2d Cir.2001) (adopting a case by case test to look at the age of the debtor, the mandatory nature of the contributions and impact on employment, dollar amount of any penalties, and other circumstances); *In re Delnero*, 191 B.R. 539, 542 (Bankr. N.D.N.Y. 1996); *In re Cornelius*, 195 B.R. 831 (Bankr. N.D.N.Y. 1995); *In re Cavanaugh*, 175 B.R. 369, 373 (Bankr. D. Idaho 1994); *In re Scott*, 142 B.R. 126, 135 (Bankr. E.D. Va. 1992) (not reasonably necessary under §1325(b)); *In re Fountain*, 142 B.R. 135, 137 (Bankr. E.D. Va. 1992) (cannot make voluntary contribution unless pay Ch. 13 creditors in full); *In re Ward*, 129 B.R. 664, 668 (Bankr. W.D. Okla. 1991); *In re Colon Vazquez*, 111 B.R. 19, 20 (Bankr. D. Puerto Rico 1990); *In re Festner*, 54 B.R. 532, 533 (Bankr. E.D.N.C. 1985); *In re Harshbarger*, 66 F.3d 775, 777 (6th Cir. 1995) (Ch 13 case: not necessary for maintenance or support); *Collins v. Hesson (In re Hesson)*, 190 B.R. 229, 237-38 (Bankr. D. Md. 1996).

\$ 15,190.36 divided by 8th pay period = \$ 1,898.79 average per pay period x 26 annual periods =
\$ 49,368.67 divided by 12 months = \$ 4,114.06 average net pay per month.

Based on the pay stub of Mary J. Bauer^{3/}, for pay period ending 4/1/04, she has the following net income:

YTD Gross	\$ 9,751.16
Less YTD	
Fed.	(777.16)
Soc. Sec.	(581.01)
Medicare	(135.88)
MN State	(382.41)
Dental	(35)
Flex	(145.88)
Health	(231)
LTD	(21.77)
YTD Net Income	\$ 7,441.05

\$ 7,441.05 divided by 7th pay period = \$ 1,063.01 average per pay period x 26 annual periods =
\$ 27,638.19 divided by 12 months = \$ 2,303.18 average net pay per month.

\$ 4,114.06 + \$ 2,303.18 = \$ 6,417.24 total average monthly net income.

10. On Schedule J, the debtors list monthly expenses of \$ 5,807.25. The debtors list ACT alarm system payment of \$ 40.00 per month. An alarm system is not reasonable or necessary for the support of the debtors and should be eliminated.

The debtor list car payment of \$ 912.00 per month for 2002 Q45 Infiniti. This amount is excessive and should be reduced by \$ 500.00 or more. *See In re Mathes*, 1996 WL 1055813, *3

^{3/}Due to privacy issues with the internet, the pay stubs are not attached. However, a copy can be made directly to debtor's counsel or the Chapter 7 Trustee upon request.

(Bankr. D. Minn. Aug. 21, 1996) (holding that debtor should be able to “obtain, finance, and operate a perfectly serviceable [automobile] for no more than \$ 300.00 per month, and possibly less. This, then, is the maximum sum that should be attributed to his budget for transportation expenditures.”); *see also In re Wilkens*, 1997 WL 1047545, *3 (Bankr. D. Minn. March 26, 1997) (holding that \$ 275.00 - 300.00 for installment payments, \$ 75.00 - \$ 100.00 for costs of operation of vehicle, and insurance cost was sufficient).

The debtors list home maintenance expense of \$ 750.00 per month. The debtors submitted a copy of their homeowner's special assessment fees totaling \$ 18,000.00 and check copies paid to their association for the special assessment fees totaling \$ 425.41 per month. This expense should be reduced by \$ 300.00.

The debtors list food expense of \$ 800.00 per month. The debtors submitted check copies for period February - April 2004 averaging \$ 690.99 per month. This expense should be reduced by \$100.00.

The debtor list transportation expense of \$ 300.00 per month. The debtors submitted check copies for January and April 2004 averaging \$ 154.05 per month. This expense should be reduced by \$ 100.00.

The debtors list charitable contributions of \$ 100.00 per month. The debtors historical records, the tax returns do not support this level of donations. The 2003 tax returns show that charitable gifts from cash and check totaled \$ 300.00 for the entire year, or \$ 25.00 per month. It appears that the debtor's average charitable donations for the past year has been less than \$ 100.00 per month. While it is not necessary to compute this deduction for § 707(b) purposes, the United States Trustee would argue that the purpose of the charitable donations statute is to protect historical donations, not to provide the debtors with an opening to increase donations above

historical levels. This expense should be reduced by \$ 75.00.

Adjusted Schedule J expenses are \$ 4,692.25.

11. Average net monthly income of \$ 6,417.24 less monthly expenses of \$ 4,692.25 provides the debtors with monthly disposable income of \$ 1,724.99.

12. Monthly disposable income of \$ 1,724.99 would enable the debtors to pay approximately \$ 62,099.64 or 83% of the unsecured creditors in a hypothetical thirty six month Chapter 13 plan. The debtors can pay the unsecured creditors in full in a hypothetical sixty month Chapter 13 plan with monthly payments of \$ 1,239.79.

13. The debtors are currently employed, and there does not appear to be any likelihood that their employment will be terminated at any time in the future.

14. The debtors have the ability to repay a substantial portion of their general unsecured debt and there appears to be no reason for their unwillingness to do so.

15. As an alternative to dismissal, the United States Trustee does not oppose voluntary conversion of this case to Chapter 13.

WHEREFORE, the United States Trustee respectfully requests that this chapter 7 case be dismissed.

Dated: May 21, 2004

Respectfully submitted,

HABBO G. FOKKENA
United States Trustee
Region 12

By: /s/ Sarah J. Wencil
Sarah J. Wencil
Trial Attorney
United States Trustee's Office
1015 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415
IA ATTY No. 14014
(612) 664-5500



U. S. Department of Justice

Office of the United States Trustee

***Districts of Minnesota, North Dakota,
South Dakota and Iowa***

U.S. Courthouse, Suite 1015

300 South Fourth Street

Minneapolis, MN 55415

612 / 664-5500

FAX 612 / 664-5516

April 9, 2004

Terry Graff
Graff Law Office, Inc.
1001 Center Avenue, Suite H-1
Moorhead, MN 56560

Re: *William L. and Mary J. Bauer, Bankr. No. 04-30933*

Dear Mr. Graff:

As you are aware, the Office of the United States Trustee must investigate every debtor pursuant to 11 U.S.C. § 707(b). There is incomplete information in the above named case for our office to complete its investigation of this case. Please provide **copies** of the following information on or before May 14, 2004.

1. Copies of last three pay stubs for both debtors.
2. Copies of the 2001, 2002 and 2003 state and federal tax returns, including attachments (W-2s).
3. Provide any documentation showing that any reduction for retirement is mandatory (if nothing is submitted, the United States Trustee shall assume that it is a voluntary contribution).
4. Copies of check stubs or receipts for last three car payments. Provide copy of purchase agreement.
5. Copies of check stubs or receipts for last three months of home maintenance expenses and a copy of the townhouse assessment for siding.
6. Copies of check stubs or receipts for last three months of food expenses.
7. Copies of check stubs or receipts for last three months of clothing expenses.
8. Copies of check stubs or receipts for last three months of transportation expenses.

Attached Exhibit "1"

9. Copies of check stubs or receipts for last three months of medical and dental expenses and all medical insurance reimbursements.
10. Copies of check stubs or receipts for last three months of recreation expenses.
11. Copies of bank statements for US Bank account and any other checking and savings account and copies of the check register or other log for the account, for the period of September 2003 - February 2004.

Please call if you have a question or concern about this letter.

Sincerely,

HABBO G. FOKKENA
UNITED STATES TRUSTEE



Sarah J. Wencil
Trial Attorney

cc: William L. and Mary J. Bauer
John A. Hedback, Chapter 7 Trustee



RECEIVED

1001 Center Avenue, Suite H-1
Moorhead, MN 56560
Phone: (218) 291-1429
Fax: (218) 227-0325
E-Mail: grafflawoffice@integraonline.com
EQUAL MEANS EQUAL

GRAFF LAW OFFICE INCORPORATED

May 7, 2004

US Bankruptcy Trustee
Attn.: Sarah J. Wencil
US Courthouse Suite 1015
300 South Fourth Street
Minneapolis, MN 55415

RE William and Mary Joann Bauer
Chapter 7 Bankruptcy Case # 04-30933

Dear Trustee,

Please find enclosed the additional documentation you requested in the above-referenced case in your letter of April 9, 2004.

If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Terry Graff".

Terry Graff
Graff Law Office Incorporated

Enclosures Pay Stubs for William and Mary Bauer
Federal and State Tax Returns
Check Stubs/Receipts for clothing, food and transportation expenses
Check Stubs/Receipts for medical and dental expenses
Bank Statements
Lease Agreement for Vehicle and Maintenance
Copies of Checks/check register
Assessment for Siding

VERIFICATION

I, Sarah J. Wencil, trial attorney for the United States Trustee, the movant named in the foregoing motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on: May 21, 2004

Signed:

/s/ Sarah J. Wencil
Sarah J. Wencil
Trial Attorney

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

William L. and Mary J. Bauer,

Chapter 7

Debtor(s).

BK 04-30933 GFK

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

The United States Trustee submits this memorandum in support of his motion to dismiss this case under 11 U.S.C. § 707(b). *See* Local Rule 9013-2(a).

Analysis

A Motion to Dismiss for Substantial Abuse is governed by Section 707(b) of the Bankruptcy Code, which provides:

After notice and a hearing, the court, on its own motion or on a motion by the United States trustee but not at the request or suggestion of any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts if it finds that the granting of relief would be a substantial abuse of the provisions of this chapter. There shall be a presumption in favor of granting the relief requested by the debtor. In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make charitable contributions (that meet the definition of ‘charitable contribution’ under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4).

11 U.S.C. § 707(b) (1994) (as amended by Religious Liberty and Charitable Donation Protection Act of 1998). The United States Trustee bears the burden of showing substantial abuse. *In re Dubberke*, 119 B.R. 677, 679 (Bankr. S.D. Iowa 1990).

(1) The Debtor's Debts Are Primarily Consumer Debts.

Section 101(8) of the Bankruptcy Code defines "consumer debts" as "debt incurred by an individual primarily for a personal, family, or household purpose." 11 U.S.C. § 101(8) (1994). "Debt" is defined as a "liability on a claim." 11 U.S.C. § 101(12) (1994). "Claim" is defined as a "right to payment, whether or not such right is reduced to judgment, liquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5)(A) (1994).

The purpose of the debt generally determines whether a debt is a consumer debt. *Zolg v. Kelly (In re Kelly)*, 841 F.2d 908, 913 (9th Cir. 1988); *In re Palmer*, 117 B.R. 443, 446 (Bankr. N.D. Iowa 1990). If the credit transaction does not involve a business transaction or a profit motive, it is usually regarded as a consumer debt. *Palmer*, 117 B.R. at 446 (citing *In re Booth*, 858 F.2d 1051, 1054-55 (5th Cir. 1988)); *In re Berndt*, 127 B.R. 222, 223 (Bankr. D.N.D. 1991) (citing *Kelly* and *Booth*, but distinguishing *Booth* by concluding that private investment debts, not used to further an ongoing business, were consumer debts).

In the present case, it appears that the debts listed on Schedule F are primarily consumer debts. The debtors checked on the Petition that the nature of the debts are consumer/non-business.

(2) The Granting of Relief under Chapter 7 Constitutes Substantial Abuse of Chapter Seven of the Bankruptcy Code.

To satisfy the "substantial abuse" standard under Section 707(b), the Eighth Circuit has ruled that the primary consideration is whether the debtor has the ability to fund a 13 plan. *In re Walton*, 866 F.2d 981, 984 (8th Cir. 1989) (following *In re Kelly*, 841 F.2d 908, 914-15 (9th Cir. 1988); *United States Trustee v. Harris*, 960 F.2d 74, 76 (8th Cir. 1992); *Fonder v. United States*, 974 F.2d 996, 999 (8th Cir. 1992); *Huckfeldt v. Huckfeldt (In re Huckfeldt)*, 39 F.3d 829,

831 (8th Cir. 1994) (comparing § 707(b) to § 707(a)).

While bad faith on the part of the debtor may constitute substantial abuse under Section 707(b), bad faith is not required to be shown to satisfy the "substantial abuse" standard when the debtor is otherwise able to repay his or her debts out of future income:

This is not to say that inability to pay will shield a debtor from section 707(b) dismissal where bad faith is otherwise shown. But a finding that a debtor is able to pay his debts, standing alone, supports a conclusion of substantial abuse.

Walton, 866 F.2d at 985 (quoting *In re Kelly*, 841 F.2d at 914-15); *Harris*, 960 F.2d at 76 (stating that "egregious behavior" by the debtor is not a necessary element for a Chapter 7 case to be dismissed under Section 707(b)). While the unique hardships and the good faith of the debtor are relevant factors, those factors are not as important as the ability of the debtor to fund a Chapter 13 plan. *Walton*, 866 F.2d at 983; *see also Harris*, 960 F.2d at 77 (rejecting the "totality of the circumstances" test espoused by the Fourth Circuit Court of Appeals in *Green v. Staples (In re Green)*, 934 F.2d 568, 572 (4th Cir. 1991), in favor of examining whether a debtor may fund a Chapter 13 plan out of future income).

Whether the debtor is eligible to file a petition under Chapter 13 after a Section 707(b) dismissal is also not a relevant factor, and likewise, the debtor cannot be forced to file a Chapter 13 petition after a 707(b) dismissal order is entered if the debtor is qualified for Chapter 13 relief. *Fonder*, 974 F.2d at 999. "The essential inquiry remains whether the debtor's ability to repay creditors with future income is sufficient to make the Chapter 7 liquidating bankruptcy a substantial abuse of the Code." *Id.*

In addition, the Eighth Circuit holds that a bankruptcy court may reject the credibility of amended schedules when the amendments are offered after a Section 707(b) motion is filed and the

amended schedules seek to decrease income and/or increase expenses because the debtor swore as to the accuracy of the initial schedules. *Fonder*, 974 F.2d at 1000.

In the District of Minnesota, there is no set percentage of repayment that must be met for substantial abuse to be present. The District Court of Minnesota opines that the determination of what is substantial should be made on a case-by-case basis:

In this Circuit, there is no clear cut formula or quantitative, threshold percentage of debt that must be repaid under a Chapter 13 plan in order to constitute grounds for dismissal for "substantial abuse." See *Walton*; *Fonder*; see also *In re Schmidt*, 200 B.R. 36, 38 (Bankr. D. Neb. 1996).... Rather, (and until such a threshold is articulated), Bankruptcy Courts are to use their best judgment to determine what repayment percentage is appropriate on a case-by-case basis. Considering the record before it, the Bankruptcy Court concluded, without comment, that a 35% repayment plan over a three year term was sufficient to constitute "substantial abuse." After conducting a *de novo* review of the record, this Court agrees. An ability to contribute more than \$17,000 towards \$ 44,000 of unsecured debt is "substantial."

Mathes v. Stuart (In re Mathes), Civil File No. 3-96-906, slip op. at 6-7 (D. Minn. July 2, 1997)
See also In re Shirley Wilkins, 1997 WL 1047545 (Bankr. D. Minn. March 26, 1997) (Kishel, J.)
(holding that the ability to pay 28% in three years or 49% in five years of unsecured debts was a substantial abuse under § 707(b)).

In the present case, the debtor has the ability to pay approximately \$ 62,099.64 or 83% of the unsecured creditors in a hypothetical thirty six month Chapter 13 plan. The debtors can pay the unsecured creditors in full in a hypothetical sixty month Chapter 13 plan with monthly payments of \$ 1,239.79. The ability to fund a Chapter 13 plan is grounds to dismiss this case for substantial abuse under Section 707(b).

WHEREFORE, the United States Trustee submits this memorandum in support of his motion to dismiss the above-captioned case as a substantial abuse of the Bankruptcy Code.

Dated: May 21, 2004

Respectfully submitted,

HABBO G. FOKKENA
United States Trustee
Region 12

By: /s/ Sarah J. Wencil
Sarah J. Wencil
Trial Attorney
United States Trustee's Office
1015 United States Courthouse
300 South Fourth Street
Minneapolis, MN 55415
IA ATTY No. 14014
(612) 664-5500

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

William L. and Mary J. Bauer,

Chapter 7

Debtor(s).

BK 04-30933 GFK

ORDER

At St. Paul, Minnesota, this _____ day of _____, 2004, the United States Trustee's Motion to Dismiss under 11 U.S.C. § 707(b) came before the Court for hearing.

Appearances were noted in the record.

The Court made its findings of fact and conclusions of law on the record pursuant to Rule 52 of the Federal Rules of Civil Procedure and Bankruptcy Rule 7052.

IT IS HEREBY ORDERED:

That the Chapter 7 bankruptcy case filed by the above-captioned debtors is dismissed pursuant to 11 U.S.C. Section 707(b).

The Honorable Gregory F. Kishel
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

William L. and Mary J. Bauer,

Chapter 7

Debtor(s).

BK 04-30933 GFK

CERTIFICATE OF MAILING

I, Emily Rohr, certify under penalty of perjury that I am an employee in the Office of the United States Trustee for the District of Minnesota and am a person of such age and discretion as to be competent to serve papers.

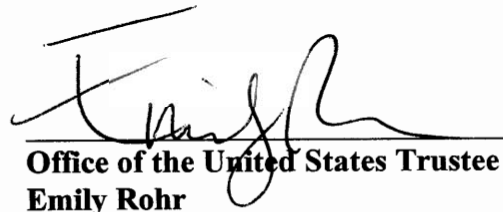
That on May 21, 2004, I served a copy of the Proposed Notice of Hearing, Motion to Dismiss Under 11 U.S.C. §707(b), Memorandum of Law in Support of Motion to Dismiss; and proposed Order in the above-referenced case by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Minneapolis, Minnesota.

Addressee(s):

Terry Graff
Graff Law Office, Inc.
1001 Center Avenue, Suite H-1
Moorhead, MN 56560

John A. Hedback
Foster, Hedback, Brever, Arendt & Carlson, PLLC
2855 Anthony Lane S., Suite 201
St. Anthony, MN 55418

William L. and Mary J. Bauer
3124 Farnum Drive
Eagan, MN 55121


Office of the United States Trustee
Emily Rohr

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

William L. and Mary J. Bauer,

Chapter 7

Debtor(s).

BK 04-30933 GFK

CERTIFICATE OF MAILING

I, Emily Rohr, certify under penalty of perjury that I am an employee in the Office of the United States Trustee for the District of Minnesota and am a person of such age and discretion as to be competent to serve papers.

That on May 21, 2004, I served a copy of the Proposed Notice of Hearing, Motion to Dismiss Under 11 U.S.C. §707(b), Memorandum of Law in Support of Motion to Dismiss; and proposed Order in the above-referenced case by placing said copy in a postpaid envelope addressed to the person(s) hereinafter named, at the place and address stated below, which is the last known address, and by depositing said envelope and contents in the United States Mail at Minneapolis, Minnesota.

Addressee(s):

Terry Graff
Graff Law Office, Inc.
1001 Center Avenue, Suite H-1
Moorhead, MN 56560

John A. Hedback
Foster, Hedback, Brever, Arendt & Carlson, PLLC
2855 Anthony Lane S., Suite 201
St. Anthony, MN 55418

William L. and Mary J. Bauer
3124 Farnum Drive
Eagan, MN 55121

**Office of the United States Trustee
Emily Rohr**